

draft

AGREEMENT

by

**THE STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

and

(CONTRACTOR)

DEQ CONTRACT NO. _____

AGREEMENT

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AGREEMENT

I. INTRODUCTION AND PURPOSE

This Agreement is entered into between _____ (Contractor) and the Montana Department of Environmental Quality (DEQ) for the purpose of Contractor providing analytical laboratory services to DEQ as detailed in this Agreement.

II. SCOPE OF WORK

Contractor will conduct analytical and/or geotechnical analyses of environmental media including soil, water, air, liquid, waste geotechnical, construction and other samples collected by DEQ staff and other affiliated parties.

A. SAMPLE SUBMISSION AND PROCESSING

DEQ, its employees, representatives, agents, or contractors will submit samples for analysis with a chain of custody form describing the sample type, the required analysis, and any special requests or conditions. Upon receipt of a sample and chain of custody sheet from DEQ, Contractor(s) will be authorized to perform the requested analyses, in accordance with the analytical methods, and at the price(s) listed in Appendix I unless a discount or other charge applies. All laboratory analyses requested under this Agreement must be completed within fourteen (14) calendar days from the date of Contractor's receipt of samples, unless otherwise agreed in writing. If requested analyses must be reported within a shorter time, DEQ will request that the sample be processed as a "Rush." Unless otherwise agreed in writing, Rush samples must be completed within five (5) days from the date of Contractor's receipt of samples, unless otherwise agreed in writing. Contractor will provide any necessary sampling containers, chain of custody forms, and coolers upon request by DEQ. DEQ will request sampling containers, chain of custody forms, and coolers at least three (3) days in advance of a planned sampling trip.

B. SAMPLE HANDLING

Upon receipt of the sample and chain of custody form, Contractor is responsible for sample handling, analysis, storage, and disposal.

C. ANALYTICAL PARAMETERS AND REQUIRED METHODS

DEQ will request laboratory analysis of samples of environmental media including groundwater, surface water, liquids, soil, vapor, air, and waste, and/or geotechnical and construction materials samples including soils and aggregates, by the listed laboratory methods for the analytical parameters, and by the laboratory methods listed in Appendix I. DEQ may request analyses that are not listed in Appendix I. When DEQ requests an analysis that is not listed in

Appendix I, DEQ will pay the lab's standard list price for the analysis unless a discount applies, or unless otherwise agreed. Unless otherwise requested or approved by DEQ, analyses requested under this Agreement must be performed in accordance with the analytical methods listed in Appendix I.

D. QUALITY CONTROL

Contractor must meet EPA and DEQ quality control / quality assurance requirements, and participate in other regular performance audits. DEQ may specify a particular quality assurance plan at the time the sample and chain of custody form is submitted for analysis.

E. REPORTING AND ELECTRONIC DATA TRANSFER

Contractor will report analytical results to DEQ promptly upon completion of the requested analyses. Written reports must reference this DEQ Contract Number. DEQ may require electronic data transfer for some lab reports. Contractors must be capable of meeting DEQ's electronic data transfer needs.

Upon request by DEQ, analytical laboratory results will be imported electronically by means specified by DEQ.

Upon request by DEQ, signed final analytical lab reports and an image of the completed chain of custody form submitted with the samples may be submitted to DEQ as Adobe PDF files. A disk (CD/DVD/DVR) or universal serial bus (USB) containing the Adobe PDF file or files must be submitted to DEQ.

F. CONTRACT PRICES AND PAYMENT PROVISIONS

DEQ will pay Contractor its standard list price, set forth in Appendix I, for each performed analysis subject to agreed upon discounts, fees or surcharges for special processing or services. Upon completion of services, and submittal of the report to DEQ, Contractor will invoice DEQ for payment. The invoice must include:

1. the date the analysis was performed;
2. a description of the analysis performed;
3. the price of the analysis performed, listed in Appendix I, or Contractor's standard list price if the analysis is not listed in Appendix I;
4. the amount of any applicable discounts;
5. the amount of any additional charges;
6. the number of times the analysis was performed;
7. the total price;
8. a copy of the chain of custody form;
9. the name of the DEQ staff submitting the sample; and
10. this DEQ Contract Number.

III. CONTRACT REQUIREMENTS

A. INSURANCE

Before beginning work under this Agreement, Contractor will procure the following types of insurance and will maintain the insurance, at its cost and expense, throughout the term of the Agreement:

1. Montana workers' compensation coverage or an approved exemption from such coverage in accordance with the Montana Worker's Compensation Act, § 39-71-101, MCA, et seq., or proof of coverage compliant with similar applicable laws in the state in which the laboratory is physically located;
2. Comprehensive or Commercial General Liability insurance coverage for bodily injury, personal injury, death or loss, or damage to property of third persons or other liability due to the negligent acts or omissions of Contractor or its officers, agents, representatives, assigns or subcontractors in the minimum amount of \$500,000 per occurrence and \$1,000,000 in the aggregate for each policy year; and
3. If vehicles are used in performance of services under this Agreement, Commercial Automobile Liability insurance for claims arising out of maintenance, use, or operation of a motor vehicle, including personal vehicles, required under this Agreement in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for each policy year.

Contractor agrees to submit for DEQ approval a certificate of insurance from an insurer with a Best's rating of no less than A - evidencing the above-required coverage. The certificates for Commercial General Liability and for Commercial Automobile Liability insurance coverage must name the State of Montana as an additional insured under the contractor's policy.

The Contractor's insurance will be primary insurance with respect to the State of Montana, its officers, officials, employees, and representatives. Any insurance or self-insurance maintained by the State will be in excess of Contractor's insurance.

Any deductible or self-insurance retention must be declared to and approved by DEQ. The Contractor must notify DEQ immediately of any material change in insurance coverage.

B. TERM OF CONTRACT AND CONTRACT RENEWAL

This Agreement will take effect upon execution by DEQ and Contractor, and the effective date of this Agreement will be the latter of the dates of signature by DEQ and Contractor. This Agreement will remain in effect for an initial period of two (2) years from the effective date, unless the Agreement is terminated or

modified as provided herein. At its option, DEQ may decide to extend this Agreement in one-year increments. The total period of performance will not exceed any time limits imposed by statute.

C. ANNUAL CONTRACT PRICE ADJUSTMENTS AND CONTRACTOR'S PRICE WARRANTIES

Contractor warrants that any annual price adjustment negotiated under this Agreement will be based on cost and pricing data that is current, accurate, complete, and supported by Contractor's invoices, books and records. Contractor further warrants that it will provide services at costs which are as low, or lower than those Contractor charges its most favored customer for comparable services under similar terms and conditions.

D. CONTRACT TERMINATION

Either party may terminate this contract by giving sixty (60) days prior written notice to the other party.

Upon termination for default, the parties will have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that each party will pay its own legal costs and attorneys' fees arising in any way from this Contract.

Upon termination for DEQ's convenience, Contractor will be entitled to payment in accordance with this Agreement for services rendered by Contractor during the period prior to the effective date of termination.

Upon receipt of written notice that this Agreement has been terminated, Contractor will promptly deliver or otherwise make available to DEQ all reports, and other information and materials accumulated by Contractor in performing this Agreement, whether completed or in process.

IV. TERMS AND CONDITIONS

A. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to enter into this Agreement with DEQ must register with the Montana Secretary of State, and remain registered throughout the length of the contract. Businesses that are incorporated in another state or country must obtain a certificate of authority before entering into this Agreement. Proof of authority is required. Questions may be answered or registration may be accomplished by contacting the Secretary of State at (406) 444-3665 or at: <http://www.sos.mt.gov>.

B. CHOICE OF LAW AND VENUE

This Request for Proposals and Agreement are governed by the laws of

Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court in and for the County of Lewis and Clark, State of Montana, and each party will pay its own costs and attorney fees.

C. NON-DISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. All hiring necessary as a result of this contract must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing under this contract.

D. HOLD HARMLESS / INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

E. ACCOUNTING, AUDIT AND RETENTION OF RECORDS

1. Contractor will maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.
2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, the U.S. Environmental Protection Agency, the U.S. Office of Surface Mining, or other federal funding agency, and the Comptroller General of the United States, or their authorized agents, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section 17 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records under paragraph 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records. (§18-1-118, MCA).

3. Contractor will disclose all information and reports resulting from access to the records maintained in paragraph 6.1 to any of the agencies referred to in paragraph 6.2.
4. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.
5. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party, whichever period is longer. Contractor may not destroy any records without first offering the records to the State.
6. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after DEQ receives the audit report.

F. INTELLECTUAL PROPERTY

All work products of Contractor generated pursuant to this Agreement will become the sole and separate property of DEQ. Any other ownership interest or other right to use any work product generated under this Agreement must be approved in writing in advance by DEQ. DEQ will be deemed granted a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, any work, patent or copyright developed under this Agreement.

All of Contractor's preexisting proprietary information, documents, materials, computer programs, or software developed by Contractor outside of this Agreement will remain the property of the Contractor.

G. UNAVAILABILITY OF FUNDING

The DEQ, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. (Ref: § 18-4-313(3), MCA.)

H. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of this Agreement will be granted without prior written consent of the DEQ. Services delivered which do not conform to the terms, conditions, and specifications set forth in this Agreement may be rejected at the Contractor's

expense.

I. REFERENCE TO CONTRACT

The DEQ Contract number must appear on all invoices and correspondence pertaining to this Agreement.

J. PAYMENT TERMS

All payment terms will be computed from the date of delivery of services or receipt of a properly executed invoice, whichever is later. The State is allowed thirty (30) days to pay such invoices without incurring interest. Contractor must provide banking information at the time of execution of this Agreement in order to facilitate State electronic fund transfer payments. All prices and payments must be in U.S. dollars.

K. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Contractor will not assign, transfer or subcontract any portion of this contract without the express written consent of DEQ. (See § 18-4-141, MCA.)

L. SEVERABILITY CLAUSE

A declaration by any court, or any other binding legal source, that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement, unless the provisions are mutually dependent.

V. EXECUTION

This Agreement consists of nine pages and one Appendix / Exhibit. A copy of the original has the same force and effect for all purposes as the original. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement. Delivery by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

To express their intent to be bound by the terms of this Agreement, DEQ and Contractor have executed this document on the dates set out below:

STATE OF MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

DATE

BY: _____

Contracts Officer

Financial Services
Metcalf Building
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved for legal content by:

Thad Adkins
DEQ Legal Counsel

Date

CONTRACTOR NAME

DATE

BY:

NAME
Title
Street or P.O. Address
City, State, Zip

FEDERAL ID NO.
